

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MELVA CHAPMAN

Claimant

VS.

BEECH AIRCRAFT CORPORATION

Respondent

AND

SELF-INSURED

Insurance Carrier

Docket No. 159,544

ORDER

ON the 15th day of March, 1994, the application of the respondent for review by the Workers Compensation Appeals Board of an Award entered by Special Administrative Law Judge William F. Morrissey, dated February 8, 1994, came on for oral argument in Topeka, Kansas.

APPEARANCES

Claimant appeared by and through her attorney Brian Pistotnik of Wichita, Kansas who appeared by telephone. Respondent and insurance carrier appeared by and through their attorney Jeff C. Spahn, Jr. of Wichita, Kansas who appeared in person in Topeka, Kansas. There were no other appearances.

RECORD

The record as specifically set forth in the award of the administrative law judge is hereby adopted by the Appeals Board.

STIPULATIONS

The stipulations as specifically set forth in the award of the administrative law judge are hereby adopted by the Appeals Board.

ISSUES

(1) Did the claimant's accidental injury arose out of and in the course of her employment with the respondent?

(2) Did claimant gave timely notice pursuant to K.S.A. 44-520 and if not whether respondent was prejudiced by this lack of notice?

(3) Was timely written claim submitted pursuant to K.S.A. 44-520a?

(4) What is the nature and extent of claimant's disability?

(5) Is the medical testimony of Dr. Daniel D. Zimmerman admissible, having been submitted subsequent to the claimant's terminal date?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record and the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

(1) Claimant has failed to prove by a preponderance of the credible evidence that she suffered an injury arising out of and in the course of her employment with Beech Aircraft Company on January 8, 1991.

On January 8, 1991, claimant, an employee of Beech Aircraft Company parked her car in the employer provided parking lot next to Central Street between Webb and Greenwich Streets in Wichita, Kansas. Claimant worked the 7:00 a.m. to 3:30 p.m. shift and regularly parked her car in the lot north of Central Street. In order to reach the plant claimant had to cross Central Street in one of the several available crosswalks. Claimant, electing to forego the use of the crosswalks, jaywalked across Central Street and, while in the middle of Central Street was struck by an automobile. At the time of the accident claimant had not clocked in for work and had not assumed the duties of her employment with Beech Aircraft Corporation.

K.S.A. 44-501(a) states in part:

"If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act. In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record."

K.S.A. 44-508(f) states as follows:

The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the approximate cause of which is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer.

The claimant in this instance was injured while crossing a busy city street in Wichita, Kansas. The claimant was on her way to assume the duties of employment but it can not be said that the route across Central is a route involving a special risk or hazard and it further cannot be said it is a route not used by the public except in dealings with the employer. Central Street, in that vicinity, is a major city artery to several businesses in east Wichita.

Claimant cites Wilburn v. Boeing Airplane Company, 188 Kan. 722, 366 P.2d 246 (1961) in support of her claim that her injury arose out of and in the course of her employment. There are significant and distinct differences between the facts in Wilburn and the case at hand. In Wilburn, Boeing furnished police, supervision, control and direction of pedestrian traffic on the street in question. Boeing helped pay for the crosswalks and provided lighting for the streets in the general area of the accident. Boeing acknowledged that it had full control of motor and pedestrian traffic on the street and in the crosswalk in question. The court in Wilburn found the language of K.S.A. 44-508(f) in effect at that time as follows, "the approximate cause of which injury is not the employer's negligence", to be decisive in the determination of Boeing's liability. The court felt the application of K.S.A. 44-508(k) to be "inescapable" in establishing Boeing's negligence in failing to properly light the crosswalk and in reducing the police supervision during the nighttime hours. In this case, Beech Aircraft Corporation assumed no responsibility for Central Street, provided no lighting for the street, and was not in charge or in control of the crosswalks. Beech was not shown to be negligent for the injury suffered by the claimant.

Special Administrative Law Judge Morrissey, in awarding benefits to the claimant found that Kansas would follow the more liberal rules set out in Larson's Workers Compensation Law regarding employees on public roads going between two parts of an employers premises. The determining factor here deals with the term "premise". The Kansas Court of Appeals in Thompson v. Law Offices of Alan Joseph, 19 Kan. App. 2d 367 (1994) rejected the liberal attitude of Larson's regarding the term premises stating that Kansas narrowly construes the term premises to be a place controlled by the employer or a place where an employee may reasonably be during the time he or she is doing what a person so employed may reasonably do during or while the employment is in progress. Id. at 373 and 374.

The claimant, Melva Chapman was not on the premises of Beech Aircraft when struck by the vehicle and was not at a place where she would reasonably be during a time she would anticipate being employed by the respondent. The narrow construction of the term premises in Kansas and the language contained in Thompson requires a finding that a major city street in Wichita, Kansas, not under the supervision and control of a respondent is not a premise for purposes of the Kansas Workers Compensation Act.

The Appeals Board finds that claimant has failed in her burden of proving an injury arising out of and in the course of her employment with Beech Aircraft Corporation. Having found thus, the Appeals Board need not decide the remaining issues in this matter as they are rendered moot.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the award of the Special Administrative Law Judge William F. Morrissey of February, 1994 is hereby reversed and an award in favor of Melva Chapman and against Beech Aircraft Corporation is herein denied.

The fees necessary to defray the expenses of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid direct as follows:

William F. Morrissey Special Administrative Law Judge	\$150.00
Deposition Services	
Transcript of Motion Hearing	\$ 59.85
Transcript of Preliminary Hearing	\$ 81.20
Transcript of Regular Hearing	\$ 64.60
Don K. Smith & Associates	
Transcript of Regular Hearing (cont'd)	\$136.00
Gene Dolginoff Associates, Ltd.	
Deposition of Daniel Zimmerman, M.D.	\$245.85
Satterfield Reporting Services	
Transcript of Regular Hearing (cont'd)	\$287.00

IT IS SO ORDERED.

Dated this ____ day of June, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Brian D. Pistotnik, Attorney for Claimant, 2831 E. Central, Wichita, KS 67214
Jeff C. Spahn, Jr., Attorney for Respondent, 220 W. Douglas, Suite 300, Wichita,
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William F. Morrissey, Special Administrative Law Judge
George Gomez, Director